

Immigration Violations

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Revised Date:	
Issuing Authority:	Chief Stanley McFadden

414.1 PURPOSE AND SCOPE

The purpose of this policy is to provide guidelines to members of the Stockton Police Department relating to immigration and interacting with federal immigration officials.

414.1.1 DEFINITIONS

The following definitions apply to this policy (Government Code § 7284.4):

Criminal immigration violation - Any federal criminal immigration violation that penalizes a person's presence in, entry, or reentry to, or employment in, the United States. This does not include any offense where a judicial warrant already has been issued.

Immigration enforcement - Any and all efforts to investigate, enforce, or assist in the investigation or enforcement of any federal civil immigration law, including any and all efforts to investigate, enforce, or assist in the investigation or enforcement of any federal criminal immigration law that penalizes a person's presence in, entry or reentry to, or employment in the United States.

Judicial warrant - An arrest warrant for a violation of federal criminal immigration law and issued by a federal judge or a federal magistrate judge.

414.2 POLICY

It is the policy of the Stockton Police Department that all members make personal and professional commitments to equal enforcement of the law and equal service to the public. Confidence in this commitment will increase the effectiveness of this department in protecting and serving the entire community and recognizing the dignity of all persons, regardless of their national origin or immigration status.

414.3 VICTIMS AND WITNESSES

To encourage crime reporting and cooperation in the investigation of criminal activity, all individuals, regardless of their immigration status, must feel secure that contacting or being addressed by members of law enforcement will not automatically lead to immigration inquiry and/or deportation. While it may be necessary to determine the identity of a victim or witness, members shall treat all individuals equally and not in any way that would violate the United States or California constitutions.

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414.4 IMMIGRATION INQUIRIES PROHIBITED

Officers shall not inquire into an individual's immigration status for immigration enforcement purposes (Government Code § 7284.6).

414.4.1 CALIFORNIA LAW ENFORCEMENT TELECOMMUNICATIONS SYSTEM (CLETS)

Members shall not use information transmitted through CLETS for immigration enforcement purposes except for criminal history information and only when consistent with the California Values Act (Government Code § 15160).

Members shall not use the system to investigate immigration violations of 8 USC § 1325 (improper entry) if that violation is the only criminal history in an individual's record (Government Code § 15160).

414.4.2 CALIFORNIA DEPARTMENT OF MOTOR VEHICLES

Members shall not obtain, access, use, or otherwise disclose noncriminal history information maintained by the DMV for immigration enforcement (Vehicle Code § 1808.48).

414.5 DETENTIONS AND ARRESTS

An officer shall not detain any individual, for any length of time, for a civil violation of federal immigration laws or a related civil warrant (Government Code § 7284.6).

An officer who has a reasonable suspicion that an individual already lawfully contacted or detained has committed a criminal violation of 8 USC § 1326(a) (unlawful reentry) that may be subject to an enhancement due to a previous conviction of an aggravated felony under 8 USC § 1326(b) (2), may detain the person for a reasonable period of time to contact federal immigration officials to verify whether the United States Attorney General has granted the individual permission for reentry and whether the violation is subject to enhancement (Government Code § 7284.6). No individual who is otherwise ready to be released should continue to be detained only because questions about the individual's status are unresolved.

If the officer has facts that establish probable cause to believe that a person already lawfully detained has violated 8 USC § 1326(a) and the penalty may be subject to enhancement due to prior conviction for specified aggravated felonies, the officer may arrest the individual for that offense (Government Code § 7284.6).

An officer shall not detain any individual, for any length of time, for any other criminal immigration violation of federal immigration laws (Government Code § 7284.6).

An officer should notify a supervisor as soon as practicable whenever an individual is arrested for violation of 8 USC § 1326(a).

414.5.1 SUPERVISOR RESPONSIBILITIES

When notified that an officer has arrested an individual for violation of 8 USC § 1326(a) or under the authority of a judicial warrant, the supervisor should determine whether it is appropriate to:

- (a) Transfer the person to federal authorities.

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- (b) Transfer the person to jail.

414.6 FEDERAL REQUESTS FOR ASSISTANCE

Absent an urgent issue of officer safety or other emergency circumstances, requests by federal immigration officials for assistance from this department should be directed to the Watch Commander or appropriate Section Manager. The Watch Commander or Section Manager is responsible for determining whether the requested assistance would be permitted under the California Values Act (Government Code § 7284.2 et seq.).

414.7 INFORMATION SHARING

No member of this department will prohibit, or in any way restrict, any other member from doing any of the following regarding the citizenship or immigration status, lawful or unlawful, of any individual (8 USC § 1373; Government Code § 7284.6):

- (a) Sending information to, or requesting or receiving such information from federal immigration officials
- (b) Maintaining such information in department records
- (c) Exchanging such information with any other federal, state, or local government entity

Nothing in this policy restricts sharing information that is permissible under the California Values Act.

414.7.1 IMMIGRATION DETAINERS

No individual should be held based solely on a federal immigration detainer under 8 CFR 287.7 (Government Code § 7284.6).

Notification to a federal authority may be made prior to release of an individual who is the subject of a notification request only if the individual meets one of the following conditions (Government Code § 7282.5; Government Code § 7284.6):

- (a) The individual has been arrested and had a judicial probable cause determination for a serious or violent felony identified in Penal Code § 667.5(c) or Penal Code § 1192.7(c).
- (b) The individual has been arrested and had a judicial probable cause determination for a felony punishable by time in a state prison.
- (c) The individual has been convicted of an offense as identified in Government Code § 7282.5(a).
- (d) The individual is a current registrant on the California Sex and Arson Registry.
- (e) The individual is identified by the U.S. Department of Homeland Security's Immigration and Customs Enforcement as the subject of an outstanding federal felony arrest warrant.

414.7.2 NOTICE TO INDIVIDUALS

Individuals in custody shall be given a copy of documentation received from U.S. Immigration and Customs Enforcement (ICE) regarding a hold, notification, or transfer request along with

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information as to whether the Stockton Police Department intends to comply with the request (Government Code § 7283.1).

If the Stockton Police Department provides ICE with notification that an individual is being, or will be, released on a certain date, the same notification shall be provided in writing to the individual and to their attorney or to one additional person who the individual may designate (Government Code § 7283.1).

414.7.3 ICE INTERVIEWS

Before any interview regarding civil immigration violations takes place between ICE personnel and an individual in custody, the Stockton Police Department shall provide the individual with a written consent form that explains the purpose of the interview, that the interview is voluntary, and that they may decline to be interviewed or may choose to be interviewed only with their attorney present. The consent form must be available in the languages specified in Government Code § 7283.1.

414.7.4 TRANSFERS TO IMMIGRATION AUTHORITIES

Members shall not transfer an individual to immigration authorities unless one of the following circumstances exist (Government Code § 7282.5; Government Code § 7284.6):

- (a) Transfer is authorized by a judicial warrant or judicial probable cause determination.
- (b) The individual has been convicted of an offense as identified in Government Code § 7282.5(a).
- (c) The individual is a current registrant on the California Sex and Arson Registry.
- (d) The individual is identified by the U.S. Department of Homeland Security's Immigration and Customs Enforcement as the subject of an outstanding federal felony arrest warrant.

414.7.5 REPORTING TO CALIFORNIA DEPARTMENT OF JUSTICE

The Investigations Division supervisor shall ensure that data regarding the number of transfers of an individual to immigration authorities, as permitted by Government Code § 7284.6(a)(4), and the offense that allowed for the transfer is collected and provided to the Records Section for required reporting to the DOJ (Government Code § 7284.6(c)(2) (see the Records Section Policy).

414.8 U VISA AND T VISA NONIMMIGRANT STATUS

Under certain circumstances, federal law allows temporary immigration benefits, known as a U visa, to victims and witnesses of certain qualifying crimes (8 USC § 1101(a)(15)(U)).

Similar immigration protection, known as a T visa, is available for certain qualifying victims of human trafficking (8 USC § 1101(a)(15)(T)).

A qualifying victim includes any of the following:

- (a) The direct victim who suffered direct harm or who was directly and proximately harmed as the result of the criminal activity.

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- (b) A qualifying family member of a direct victim if the direct victim is incompetent, incapacitated, or deceased, including spouses, unmarried children under the age of 21, parents if the direct victim was under the age of 21, and siblings under the age of 18 if the direct victim was under 21 years of age. Indirect victims are required to cooperate in the investigation or prosecution but are not required to possess information about the crime to qualify.
- (c) A bystander or witness who was not the target of a crime, but who nevertheless suffered unusually direct injury as a result of a qualifying crime.

Any request for assistance in applying for U visa or T visa status should be forwarded in a timely manner to the General Crimes supervisor assigned to oversee the handling of any related case. The General Crimes supervisor should:

- (a) Consult with the assigned investigator to determine the current status of any related case and whether further documentation is warranted.
 - (a) For purposes of determining helpfulness there is a rebuttable presumption that a victim is helpful, has been helpful, or is likely to be helpful to the detection or investigation or prosecution of that qualifying criminal activity, if the victim has not refused or failed to provide information and assistance reasonably requested by law enforcement. If the victim reasonably asserts that they were unaware of a request for cooperation, their failure to cooperate does not rebut the presumption of helpfulness (Penal Code § 679.10(h)).
- (b) If it is determined that the case involves a criminal investigation forwarded to the District Attorney's office for prosecution (i.e., arrest or complaint referral), the U or T Visa request should be forwarded to the District Attorney's office for review. A courtesy letter will be mailed notifying the petitioner that their certification request has been forwarded to the District Attorney's office for review.
- (c) Address the request and complete the certification or declaration, if appropriate, in a timely manner.
 1. The instructions for completing certification and declaration forms can be found on the U.S. Department of Homeland Security (DHS) website.
 2. Form I-918 Supplement B certification shall be completed if the victim qualifies under Penal Code § 679.10 (multiple serious offenses). The certification shall be completed and not refused for the specified reasons in Penal Code § 679.10(k) (3).
 3. Form I-914 Supplement B declaration shall be completed if the victim qualifies under Penal Code § 236.5 or Penal Code § 679.11 (human trafficking). The declaration shall be completed and not refused for completion for the specified reasons in Penal Code § 679.11(j)(3).
 4. Forward the completed Form I-918 Supplement B certification or completed Form I-914 declaration B to the victim, family member, or authorized representative (as defined in Penal Code § 679.10 and Penal Code § 679.11) without requiring the victim to provide government-issued identification (Penal Code § 679.10; Penal Code § 679.11)

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- (d) Ensure that any decision to complete, or not complete, a certification or declaration form is documented in the case file and forwarded to the appropriate prosecutor. Include a copy of any completed form in the case file.
 - 1. If Form I-918 Supplement B is not certified, a written explanation of denial shall be provided to the victim or authorized representative. The written denial shall include specific details of any reasonable requests for cooperation and a detailed description of how the victim refused to cooperate (Penal Code § 679.10).
- (e) Inform the victim liaison of any requests and their status.

414.8.1 TIME FRAMES FOR COMPLETION

Detectives and their supervisors who are assigned to investigate a case of human trafficking as defined by Penal Code § 236.1 shall ensure completion of the above process and the documents needed for indicating the individual is a victim for the T visa application within 15 business days of the first encounter with the victim, regardless of whether it is requested by the victim (Penal Code § 236.5).

Detectives and their supervisors shall ensure completion of the above process and the documents needed certifying victim cooperation for a U visa or T visa application pursuant to Penal Code § 679.10 and Penal Code § 679.11 within 30 days of a request from the victim, victim's family, or authorized representative related to one of their assigned cases. If the victim is in removal proceedings, the certification shall be processed within seven days of the first business day following the day the request was received.

If the victim asserts that a qualifying family member will lose eligibility for a U or T Visa in 60 or fewer days because the victim's noncitizen sibling will turn 18 years of age, the victim's noncitizen child will turn 21 years of age, or the victim will turn 21 years of age, the certification shall be processed within seven days of the first business day following the day the request was received.

414.8.2 S VISA NONIMMIGRANT STATUS

S nonimmigrant status (also known as S Visa), Form I-854A, Inter-Agency Alien Witness and Informant Record, may be submitted at the discretion of a certifying official on behalf of a qualified criminal informant as defined in Penal Code § 679.13. The law enforcement certification validates the role the informant had, has, or will have in being helpful to the investigation or prosecution of the case. Such a certification may only be withdrawn if the qualified informant refuses to provide information and assistance when reasonably requested.

No member shall reveal the immigration status of a qualified criminal informant for whom a Form I-854A is completed without their permission, except to comply with federal law or other legal process.

414.8.3 WITHDRAWAL OF CERTIFICATION

A General Crimes supervisor may withdraw or disavow Form I-918B or Form I-914B if the victim refuses to provide information and assistance when reasonably requested. USCIS Vermont

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Service Center shall be notified in writing of any such withdrawal in accordance with the [accompanying procedure](#).

414.8.4 POLICE REPORTS

Upon request, the Records Section should provide a victim or authorized representative with a copy of the report filed by the victim within seven days of the request (Penal Code § 679.10).

414.8.5 REPORTING TO LEGISLATURE

A General Crimes supervisor or authorized designee should ensure that certification requests are reported to the Legislature in January of each year and include the number of certifications signed and the number denied. The report shall comply with Government Code § 9795 (Penal Code § 679.10; Penal Code § 679.11). The report shall be submitted in accordance with the [accompanying procedure](#).